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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,513	01/29/2004	Peter K. Herman	8017-433	5534

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WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

4

Office Action Summary	Application No. 10/767,513	Applicant(s) HERMAN ET AL.	
	Examiner Peter A. Hruskoci	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1724

The disclosure is objected to because of the following informalities: In the specification on page 7 line 28 “33” appears to be erroneous and should be changed to – 32 –; on page 8 “drain valve 35” is not labeled in Fig. 1. On page 9 line 26, and page 10 line 17 “Fig. 14” appears to be erroneous. On page 18 line 5 “Fig. 5” appears to be erroneous, in line 11 “upper surface 110” and lower surface 112” do not appear to be labeled in Fig. 9, and in line 25 “capillary tube 123” does not appear to be labeled in Fig. 10; and on page 19 line 1 “upper wall 129” does not appear to be labeled in Fig. 11.

Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-3, 10, 11, 14-17, 19, 22-24, 26-28, 39, 45-50, 52, and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al. 6,238,554. It is submitted that Martin et al. (see col. 3 line 26 through col. 7 line 58) appear to disclose the structure of the filter assembly recited in the instant claims. It is noted that diffusion tube 348 and vent tube 372 appear to include the structure of the first and second capillary tubes.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 32-36, 42, and 57-60 rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. as above. The claims differ from Martin et al. as applied above by reciting that

Art Unit: 1724

the filter assembly includes a second capillary tube having a second diameter greater than the first diameter, a first opening spaced from the central axis, a specific second container and capillary tube, and a specific first capillary tube configuration. The specific diameters, spacing, number of containers, and configurations utilized would have been an obvious matter of engineering design to one skilled in the art, having the teachings of Martin et al. before him. It would have been obvious to one skilled in the art to modify the filter assembly of Martin et al. by including the recited capillary tubes, openings, and configurations, depending on the specific fluid being filtered and results desired, absent a sufficient showing of unexpected results.

Claims 20, 21, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. as above, and further in view of Gilmore 6,659,128 or Mormon et al. 6,423,883. The claims differ from Martin et al. as applied above, by reciting that the capillary tubes comprises a filter or soluble element covering the end. Gilmore disclose (see col. 4 lines 35-60) and Mormon et al. (see col. 5 lines 3-19) disclose that it is known in the art to utilize a filter and liquid soluble seal on the end of a tube, to filter fluid flowing into a tube and to regulate fluid flow through a tube, respectively. It would have been obvious to one skilled in the art to modify the filter assembly of Martin et al. by including the recited filter or soluble element in view of the teachings of Gilmore or Mormon et al., to aid in purifying the fluid flowing into the tube and in regulating fluid flow through the tube, respectively.

Claims 29-31, 38, and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. as above, and further in view of Brown 5,948,248. The claims differ from Martin et al. as applied above, by reciting that the container includes a specific flow directing insert, and the container wall includes spacers or ribs. Brown disclose (see col. 5 line 3 through

Art Unit: 1724

col. 7 line 65) that it is known in the art to utilize a container with radial disposed ribs 71 for directing fluid flow through a container, and providing rigidity and strength to the container. It would have been obvious to one skilled in the art to modify the filter assembly of Martin et al. by including the recited flow directing insert and ribs in view of the teachings of Brown, to aid in directing fluid flow through the container, and providing rigidity and strength to the container. The specific partition, and spacers or ribs utilized, would have been an obvious matter of engineering design to one skilled in the art, depending on the specific fluid filtered and results desired, absent a sufficient showing of unexpected results.

Claims 1-60 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-60 of copending Application No. 10/956,408. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 1-60 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 61-107 of copending Application No. 956,408. Although the conflicting claims are not identical, they are not patentably distinct from each other because the filter assembly recited in the instant claims appears to be fully encompassed in the claims of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's election without traverse of Group I, claims 1-60 in the reply filed on 12/21/06 is acknowledged. The restriction requirement is made final.

Art Unit: 1724


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160.

The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter A. Hruskoci
Primary Examiner
Art Unit 1724

4/3/06